IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/07/2002

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

C.S.NO.141 OF 1991

Veer Narayan Trading and Investment
Company Private Limited
represented by its Director .. Plaintiff

Vs.

South India Corporation (Agencies)
Limited
represented by its General Manager .. Defendant

!For Plaintiff : Mr. S. Raghunathan

^For Defendant : Mr. S.Sampathkumar

:JUDGMENT

This suit has been filed by the plaintiff for a decree for a sum of Rs.22,40,000/- together with interest at the rate of 18% per annum from the date of plaint till the date of realisation and for costs.
2. The averments in the plaint are as follows:
The plaintiff is in the business of shipping and owned a vessel by name m.v. 'NITYA ARJUN', which was registered in the Port of Bombay. The defendant carries on business as Steamer Agents, Stevedores, etc. The plaintiff purchased the said vessel by a certificate of Sale dated 11.9.1984 executed by the Sheriff of Bombay. The said vessel was then known as m.v.'ESVEE' and then it was renamed as m.v. 'NITYA ARJUN', which was registered with the Indian Registry of Shipping on 19.1.1 985. The defendant filed a suit in C.S.No.944 of 1987 before this Court for recovery of a sum of Rs.5,39,412.12 against one Maini Shipping Private Limited and three other parties. The plaintiff herein also took out an application in A.No.5982 of 1987 in the said suit alleging that the vessel, m.v. 'NITYA ARJUN' was the only vessel owned by the said Maini Shipping Private Limited and obtained an order of injunction restraining the said vessel from sailing. The same was detained at the Port of Bombay with effect from 3.12.1987. The plaintiff immediately took out an application to vacate the interim order of injunction on the ground that the said vessel was not owned by Maini Shipping Private Limited, but by the plaintiff herein. This Court by order dated 21.1.1988 clarified its earlier order of injunction in A.No.59 82 of 1987 and held that the order of injunction was only against the said Maini Shipping Private

Limtied and that it was open to the plaintiff herein to prove its ownership to the Port of Trust of Bombay and thereafter sail the vessel. On the basis of the certified copy of the order, the Port Trust of Bombay permitted the release of the vessel on 5.2.1988. The plaintiff is a totally different legal entity and has no nexus with the said Maini Shipping Private Limited. Therefore, the detention of the vessel between 3.12.1987 and 5.2.1988 was unlawful and malicious act of the defendant. The defendant knew fully well that the plaintiff was the actual owner of the vessel m.v. "NITYA ARJUN' and in fact, had on an earlier occasion acted as agents for the said vessel and had dealt with the Plaintiff in this regard. The defendant knowingly and willfully suppressed the true facts from this Court and sought for orders in the suit in C.S.No.944 of 1987 and particularly Application No.5982 of 1987 by suggesting and misleading this Court to believe that the said vessel was owned by Maini Shipping Private Limited. The act of the defendant is one of gross and culpable negligence in arresting the plaintiff's vessel on the guise that the same was the vessel of the defendant in the said suit C.S.No.944 of 19 87. Consequent to the detention of the said vessel, the plaintiff suffered a monetary loss of Rs.35,000/- per day which the vessel would have otherwise earned if let on charter by the plaintiff and from the costs of maintaining the vessel. The vessel was detained for 64 days pursuant to the detention at the instance of the defendant. Therefore, the plaintiff has suffered loss to the extent of Rs.22,40,000/-, which the defendant is liable to pay. The plaintiff, therefore, deputed its representative to meet the defendant to ask the defendant to compensate the plaintiff for its losses. But the defendant did not show any inclination to compensate the same. Such meeting was also recorded by the plaintiff's counsel notice dated 24.1.1991 and a demand was made in such notice calling upon the defendant to make good the damages of the plaintiff. But, the defendant failed to do so. Therefore, this suit has been filed for the recovery of a sum of Rs.22,40,000/- together with interest. 3. The averments in the written statement filed by the defendant are as follows: The defendant acted as Agent for the owners, M/s. Maini Shipping Private Limited, who owned several vessels including the vessel m.v. NITYA ARJUN. In the course of the business, the defendant rendered several services as agent, expended moneys on the assurance from Maini that the same would be reimbursed along with all its charges as per the Agency Agreement. While so, at one point of time, the defendant found that Maini had planned to liquidate its assets as it incurred heavy debts. The said Nitya Arjun while it was at Cochin Port, sprang a big leak necessitating the defendant to render salvage operations out of its own funds. The defendant rendered the salvage operations. The defendant found that Maini has disposed off all their vessels except m.v. Nitya Arjun, which was lying idle at the Port of Bombay without any employment as the same require extensive repairs. The defendant found that the said vessel was about to be disposed of. Hence the defendant had filed a suit in C.S.No.944 of 1987 in which certain interim reliefs were prayed for to prevent Maini from disposing of the said vessel. Only after making proper investigations and exercising due diligence, arrest orders were obtained to protect the interests of the defendant. The present suit filed by the plaintiff herein is not maintainable. Knowing that there were several creditors, who were taking steps to proceed against the said vessel, Maini had created a sham transfer in a dummy company, namely the plaintiff only with a view to defeat the lawful claims of many creditors including the defendant.

The transfer documents were sham and were created to defeat the claims of creditors and hence the plaintiff is nothing but the creation of Maini who are the real owners and have invested money in acquiring the ship. Hence, the orders obtained in C.S.No.944 of 1987 were done in good faith and after careful investigation. The plaintiff has no right to claim damages against the defendant for the reason that the plaintiff has not suffered any monetary loss because of the arrest order passed by this court as the vessel in question was in an unseaworthy condition and lying off the waters of Bombay Port for a long period. If really the plaintiff had been suffering losses it would have intervened on the date of arrest and would have sought for orders for release of the vessel immediately by filing an application in the said suit. On the other hand, the plaintiff had taken its own time for coming to the Court. The alleged loss of Rs.22,40,000/- is purely imaginary and without basis and the said claim was made only with a view to take advantage of the orders passed by the Court. In any event even if an order of detention had not been obtained, the position would not have been different as the vessel was in no way in a fit condition to perform any sea voyage in a seaworthy condition, which is apparent by the fact that it was ultimately sold and the same was bought as scrap. Therefore, the suit is liable to be dismissed with costs.

4. On the above pleadings by the respective sides, the following issues were framed:

1. Whether the vessel m.v.NITYA ARJUN belonged to the plaintiff having been purchased by the plaintiff on 11.9.1984?
2. Whether the defendant obtained an order of injunction detaining the vessel m.v.NITYA ARJUN belonging to the plaintiff at the port of Bombay from 3rd December, 1987 to 5th February, 1988 falsely and malaciously?
3. Whether the plaintiff sustained loss on account of the same?
4. Whether the plaintiff is entitled to damages both special and general in a sum of Rs.22,40,000/-?
5. To what relief?

5. ISSUES 1 TO 5:

The plaintiff has filed the suit for a decree for a sum of Rs.22,40,000/- together with interest alleging that the plaintiff sustained loss due to the unlawful detention of its vessel M.V.NITYA ARJUN by the defendant from 3.12.87 to 5.2.88 and the defendant is liable to pay the said sum towards damages both special and general. The defendant has contested the suit that the action of the plaintiff is mala fide; that the order of arrest of the vessel M.V.NITYA ARJUN was obtained after making proper investigation and exercising due diligence; and the court order was obtained in order to protect the interest of the defendant; that the plaintiff was not the owner of the vessel M.V.NITYA ARJUN; that the real owner of the vessel M.V.NITYA ARJUN is Maini and not the plaintiff; that the alleged loss of Rs.22,40,000/- found in the plaint is purely imaginary and without any basis and the suit has been filed with an intention to make wrongful gain for the plaintiff and to cause wrongful loss to the defendant by fraudulent methods and hence, the suit has to be dismissed.

6. On the side of the plaintiff, P.W.1 was examined, and Exs.P1 to P20 were marked. On the side of the defendant, D.W.1 was examined, and Ex.D1 was marked.

7. Arguing for the plaintiff the learned counsel would submit that

the plaintiff is a Company engaged in the business of Shipping and allied services; that P.W.1 is the Director of the plaintiff Company; that in order to show the incorporation of the plaintiff Company Ex.P.1 , a certificate, is filed; that the vessel, which is originally known as m.v. ESVEE, was purchased by the plaintiff and renamed as m.v. NITYA ARJUN and registered with the Indian Registry of Shipping on 19.1 .1985; that Ex.P.2 is the letter addressed to the plaintiff Company regarding the sale of the vessel m.v. ESVEE; that Ex.P.3 is the original certificate issued by Bombay Sheriff delivering the vessel to the plaintiff; that Ex.P.6 is the xerox copy of the instrument of sale issued by the Sheriff of Bombay; that Ex.P.7 is the xerox copy of the certificate of Indian Registry; that the originals of both the documents are with the Principal Officer, Mercantile Marine Department, who is the Registrar of Indian Ships at Bombay; that the vessel m.v. NITYA ARJUN exclusively belonged to the plaintiff; that the defendant, which acted as an agent of the Shipping Company called Maini Shipping Private Limited, in order to recover certain amounts from the said Maini Shipping Private Limited filed a suit in C.S.No.944 of 1987 for recovery of a sum of Rs.5,39,412.12; that a copy of the plaint is filed as Ex.P.12; that at the time of filing of the suit, the defendant filed an application in A.No.5982 of 1987 stating that the vessel m.v. NITYA ARJUN was the only vessel owned by the said Maini Shipping Private Limited; that they obtained an order of interim injunction restraining the vessel from sailing; that at the time when an affidavit was filed in support of the said application, the defendant had a thorough knowledge that the plaintiff was the owner of the vessel m.v. NITYA ARJUN and nobody else; that by such an order, the said vessel m.v. NITYA ARJUN was illegally detained at the Port of Bombay from 3.12.19 87; that the plaintiff, who came to know about the same, filed an application in A.No.132 of 1988 to vacate the order of interim injunction; that the matter was heard by this court and an order was passed on 21.1.1988; that certified copy of the order was given only on 28.1.1 988; that in view of the direction issued by this court, the plaintiff furnished all the title deeds before the Port Officials, Bombay; that the Port Trust of Bombay permitted the release of the vessel only on 5.2.1988, and thus the vessel was under detention for a period of 64 days ; that the plaintiff, who is the exclusive owner of m.v. NITYA ARJUN, was a totally different legal entity and has no nexus with the Maini Shipping Private Limited; that there was no privity of contract between the plaintiff and the defendant, and thus the detention of the vessel was reckless, unlawful and malicious act of the defendant; that the defendant, who knew fully well that the said vessel belonged to the plaintiff, has mislead the court to believe that the said vessel m.v.NITYA ARJUN was owned by Maini Shipping Private Limited and obtained an order of interim injunction and under the stated circumstances, the defendant is liable to pay the damages and loss caused to the plaintiff; that the plaintiff has suffered a monetary loss of Rs.35000/- per day which the vessel would have otherwise earned if let on charter by the plaintiff; that the plaintiff had filed Ex.P.17 and Ex.P.18, which would clearly reveal that the charter hire offered during the relevant period was Rs.35,000/- per day, and thus, the plaintiff has suffered a loss to the extent of Rs.22,40,000/- in respect of which the said claim has been made, and thus, the claim is well proved by the plaintiff through the oral and documentary evidence, and hence, the suit has got to be decreed.

8. Countering to the above contention of the plaintiff's side the

learned counsel appearing for the defendant would urge that the suit is barred by limitation;, that the plaintiff has not proved its claim; that the defendant was the agent of Maini Shipping Private Limited and as agent they salvaged the ship, namely, NITYA AMAR belonging to the Maini Shipping Private Limited; that on that ground, the said Shipping Company was liable to pay Rs.5,39,412.12; that on their failure to pay the said amount, C.S.No.944 of 1987 was filed by the defendant; that at the time of filing of the said suit, an order of interim detention of the vessel m.v.NITYA ARJUN was obtained; that prior to the filing of the suit, the defendant has thoroughly verified the Indian Register of Shipping, wherein it was clearly stated that the owner of the vessel m.v.NITYA ARJUN was Maini Shipping Private Limited; that Ex.D.1 is the Edition of Register of Ships published by the Government of India in the year 1987; that all the particulars found at page 183 of Ex.D.1 would clearly reveal that the Maini Shipping Private Limited is the owner of the vessel m.v.NITYA ARJUN; that the said Ex.D.1 was obtained by the defendant from their Branch office at Bombay; that from Ex.D.1 it was very clear that the vessel in question m.v. NITYA ARJUN belonged to Maini Shipping Private Limited only; that it is true that m.v.NITYA ARJUN was detained at Bombay Port from 3.12.1987 to 5.2.1988 for 64 days; that the plaintiff has not produced the originals of Ex.P.6 and Ex.P.7 because they would reveal the truth that the vessel in question was not in a seaworthy condition; that though the interim injunction order was passed on 3.12.1987, the plaintiff has moved this court only on 12.1.1988 and this would be indicative of the fact that the vessel was neither employed nor was earning anything during the relevant period; that the reason adduced by P.W.1 that he was suffering from Typhoid would speak of the falsity of the explanation tendered for the delay; that it is an admitted position that the order of injunction was served on the very day; that the plaintiff, deliberately kept quite knowing fully well the injunction order, has filed an application to vacate the same belatedly; that the further reason adduced by the plaintiff that there was a delay in issuing the certified copy of the order of this court has got to be rejected as false; that having cause such a delay, the plaintiff cannot be allowed to ask damages towards the loss sustained on those days; that both Ex.P.17 and Ex.P.18 have to be rejected by the court, since no evidentiary value could be attached to those documents and they were fabricated for the purpose of the case, and thus, the plaintiff has not proved any loss sustained by them during those 64 days, in question, and hence, for all the above ground, the plaintiff's claim has got to be dismissed.

9. As seen above, the plaintiff Company has filed this suit for recovery of a sum of Rs.22,40,000/- towards damages with subsequent interest. In order to prove its claim, the plaintiff was examined as P.W.1 and Ex.P.1 to Ex.P.20 were marked as documentary evidence. The defendant was examined as D.W.1 and Ex.D.1 was marked.

10. The facts admitted by the parties can shortly be stated as follows:

The defendant herein filed a suit against Maini Shipping Private Limited and three others in C.S.No.944 of 1987 on the file of this court for recovery of a sum of Rs.5,39,412.12 alleging that the plaintiff as an agent of the first defendant was attending the first defendant's vessel at the Port of Madras, Visag,Tuticorin and Cochin and was making payments from time to time towards disbursement and dues incurred on their vessels. A copy of the plaint

in the said suit is marked as Ex.P.12. The said amount due as balance represents the expenses incurred by the plaintiff as the Port of Cochin towards salvage services rendered to the vessel Nitya Amar at the Port of Cochin when the ship developed leak and was gradually sinking. At the time of filing of the suit, the defendant took out an application in A.No.5982 of 1987 alleging that the vessel m.v.NITYA ARJUN was the only vessel owned by the said Maini Shipping Private Limited and had obtained an order of interim injunction restraining the vessel from sailing. At the time when the order was passed, the said vessel m.v.NITYA ARJUN was lying at the Port of Bombay. Consequent to the interim order of injunction, the said vessel m.v.NITYA ARJUN was detained at the Port of Bombay with effect from 3.12.1987. An application to vacate the said order of interim injunction was filed by the plaintiff herein in Application No.132 of 1988 in C.S.No.944 of 1987. This court by an order dated 2 1.1.1988 clarified that it was open for the plaintiff to prove the ownership to the Port Trust Authorities at Bombay and release the vessel. The plaintiff had applied for a certified copy of the said order, produced necessary proof before the Port Authorities of Bombay and the vessel was released on 5.2.1988.

11. The specific case of the plaintiff is that the said order of injunction obtained by the defendant was illegal and malicious. The said vessel m.v.NITYA ARJUN was exclusively belonged to the plaintiff herein and nothing to do with the Maini Shipping Private Limited, which was liable to pay the dues to the defendant, and hence, for the loss sustained at the rate of Rs.35000/- per day, the defendant is liable to pay damages as asked for in the plaint. The claim is contested by the defendant stating that the vessel in question, namely, m.v. NITYA ARJUN belonged to Maini Shipping Private Limited, and hence, the order of interim injunction was lawful, and apart from that the plaintiff has not sustained any loss, since the said vessel m.v.NITYA ARJUNA was neither seaworthy nor employed and nor was earning, and hence, the claim has got to be rejected. At the time of advancing argument a legal plea, namely, the suit is barred by limitation was also raised by the defendant's side.

12. The vessel m.v.NITYA ARJUN was originally known as m.v.ESVEE and the same was purchased by the plaintiff company in an auction held by the Bombay High Court. Ex.P.2 is the letter issued to the plaintiff Company regarding the sale of the vessel ESVEE. Ex.P.3 is the original certificate issued by the Bombay Sheriff delivering the vessel to the plaintiff. Ex.P.9 is the certificate issued by the Principal Officer, Mercantile Marine Department, Bombay District stating that there was no outstanding mortgages registered against M.V. "NITYA ARJUN" O.No.2072 of Bombay, GRT = 2987.55, NRT = 1875.19, owned by M/s. Veer Narayan Trading and Investment Co. Pvt. Ltd., Bombay on 5.4.1988. The Assistant Director General of Shipping, Government of India, Ministry of Surface Transport, Bombay has issued a formal sanction for scraping in India of the vessel m.v.NITYA ARJUN on 18.4.1988, which is marked as Ex.P.10. The ship in question m.v.NITYA ARJUN of Bombay was owned by the plaintiff company is evidenced by a certificate issued by the Nautical Adviser to the Government of India under Ex.P.11. All the above would clearly show that the vessel m.v.NITYA ARJUN, which was originally known as ESVEE, was purchased and owned by the plaintiff. Apart from the above, D.W.1, who is the Manager in the Shipping Department of the defendant corporation, has admitted that they have written Ex.P.16 letter on 14.10.1985 to the plaintiff

submitting the disbursement of account of m.v.NITYA ARJUN. In view of the above available evidence and in particular the letter written by the defendant to the plaintiff as seen under Ex.P.16, the defendant cannot be permitted to question the ownership of the plaintiff Company in respect of the vessel m.v.NITYA ARJUN.

13. A perusal of Ex.P.12, a plaint copy in C.S.No.944 of 1987 would make it abundantly clear that the defendant has made a claim against the Maini Shipping Private Limited for a sum of Rs.5,39,412.12 towards salvage charges rendered to the vessel NITYA AMAR at the Port of Cochin. It is pertinent to note that no where it is stated in the said plaint that any amount was spent on the ship in question, namely, m.v.NITYA ARJUN. There is nothing to indicate that either the plaintiff was liable or answerable to the claim or anything to do with the amount allegedly expended on that vessel. Thus the claim made under C. S.No.944 of 1987 was neither against the plaintiff nor towards any expenses incurred on the vessel m.v.NITYA ARJUN. From the averment made in the plaint in C.S.No.944 of 1987 it could be well seen that the defendant has acted as an agent of Maini Shipping Private Limited and the claim was also made only on account of the alleged dues from the Maini Shipping Private Limited. The defendant is unable to place before this court any material to show that there was any privity of contract between the plaintiff and the defendant. The defendant has also not placed any material to hold that the plaintiff herein, namely, Veer Narayan Trading and Investment Company Private Limited and Maini Shipping Private Limited were one and the same entity. The plaintiff has filed the above documentary evidence to show that the plaintiff was an independent legal entity, which owned the vessel m.v. NITYA ARJUN. The learned counsel brought to the notice of the court that P.W.1 was the Chairman of both the companies. But this would not be sufficient to hold that both the companies are the same legal entities. Much relying on Ex.D.1, the 1987 edition of Register of Ships, the learned counsel for the defendant would submit that in the said Ex.D.1 the Maini Shipping Private Limited is shown as the owner of m.v.NITYA ARJUN vessel; that only after verification of the same, the defendant has filed an interlocutory application for detention of the vessel. Added further the learned counsel from the evidence of D.W.1 that Caption Maini was the major shareholder and Director of Maini Shipping Private Limited and the defendant from reliable sources has come to know that the owner of the plaintiff company was also the major shareholder and Director of Maini Shipping Private Limited, and thus, the order of the court was obtained bonafide and there was no mala fide intention to cause loss to the plaintiff company. The said document Ex.D.1 cannot be relied on for more reasons then one. There is nothing to indicate that it was either published by the Government of India or a public document. As per Ex.P.9 certificate, the official registration number of the vessel m.v.NITYA ARJUN is 2072 of Bombay registration. In the entry relied on by the defendant's side at page 183 of Ex.D.1 in the column pertaining to m.v.NITYA ARJUN neither the official number 2072 nor callsign has been mentioned. Under such circumstances, no evidentiary value could be attached to Ex.D.1 to hold that the owner of the vessel m.v.NITYA ARJUN is Maini Shipping Private Limited. Quite evident it is from all the above that the plaintiff and Maini Shipping Company were the different entities; that the vessel m.v. NITYA ARJUN was purchased and owned by the plaintiff Company during the relevant period and the defendant in his attempt to recover the dues from the Maini

Shipping Private Limited has obtained an order of interim injunction against the vessel m.v.NITYA ARJUN, which belonged to the plaintiff herein. If the defendant had exercised care to verify the ownership of the vessel before filing the application for interim injunction, the defendant would have well avoided the interim relief sought and obtained against the vessel m.v.NITYA ARJUN. This would be clearly indicative of the negligence on the part of the defendant, and hence, the defendant is answerable for the wrongful loss caused to the defendant by such an act of utter negligence and liable to compensate the plaintiff for the damages suffered by them.

14. Insofar as the question whether the suit is barred by the law of limitation, the court has to necessarily hold that the suit is well within time. It is true that the suit has been filed for recovery of damages based on the cause of action; that the plaintiff sustained loss due to the illegal detention of the vessel; that the defendant initiated proceedings and obtained an order of interim injunction against the plaintiff vessel on 3.12.1987; that the plaintiff has filed an application No.132 of 1988 to vacate the order of interim injunction on 12.1.1988 and the order was passed on 21.1.1988; that the certified copy of the order was granted on 28.1.1988; that the Port Trust of Bombay permitted the release of the vessel only on 5.2.1988. It is contended by the defendant's side that as per Article 80 of the Limitation Act, if there was a wrongful seizure of the movable property, namely, the vessel under legal process, the suit for compensation should have been filed within one year from the date of seizure; that in the instant case, the vessel was seized on 3.12.1987. Even assuming that Article 90, which is meant for recovery of compensation for injury caused by an injunction wrongfully obtained, is applicable, the suit should have been filed within three years from the date when the injunction ceases; that in the instant case, this court has, admittedly, passed an order on 21.1.1988; that even assuming that interim injunction was wrongfully obtained by the defendant, the suit should have been filed on or before 21.1.1991, but the plaintiff has filed the suit on 26.1.1991. Thus, the suit has not been filed within three years from the date when the injunction ceases, and hence, the suit is not barred by the law of limitation.

15. Countering to the above contention, the learned counsel for the plaintiff would urge that the suit has been filed well within time; that Article 80 of the Limitation Act is not applicable to the present facts of the case; that it is true that as per Article 90 of the Limitation Act, the suit should be filed within three years from the date when the injunction wrongfully obtained ceases; that in the instant case, the injunction wrongfully obtained by the defendant actually ceased only on 5.2.1988 when the Port authorities released the ship in question; that the suit has been filed in time, since it was filed on 26.1.1991. The court is of the considered view that to the present facts of the case, Article 80 of the Limitation Act is not at all applicable, but only Article 90 of the Act is applicable. Article 90 of the Limitation Act reads as follows:

Description of suits	Period of Limitation	Time from which period begins to run
For compensation for injury caused by an	Three years	When the injunction ceases

injunction wrongfully
obtained

As per Article 90 of the Limitation Act, the suit for recovery of damages for the injury caused by an order of injunction wrongfully obtained should be filed within three years from the date when the injunction actually ceases. In the instant case, after passing of an order of interim injunction, the plaintiff has filed an application to vacate the order of interim injunction A.No.132 of 1988. This court has passed an order on 21.1.1988, which reads as follows:

"The order of injunction was passed only against Maini Shipping Private Ltd., restraining from sailing the ship from Indian waters. Injunction is only against Maini Shipping Private Limited. The applicant claims to be the owner of the ship and is a third party unconnected with the suit and he has nothing to do with the first defendant viz., Maini Shipping Private Ltd. In the event, by showing his title to the ship to the Port Trust, it is open to hi to sail the vessel and the injunction will not apply."

A reading of the above would clearly reveal that this court, while passing an order, has not vacated the injunction, but has permitted the plaintiff to show his title to the ship in question to the Port Trust, to get the ship released and to sail the vessel. Under such circumstances, as rightly contended by the learned counsel for the plaintiff, the injunction actually ceases to exist when the Port authorities released the vessel by accepting the title of the plaintiff, that was on 5.2.1988, computing the period of limitation therefrom, the suit has been filed within three years, and hence, it has to be necessarily hold that the suit is filed within time.

16. The plaintiff has claimed Rs.22,40,000/- alleging that the plaintiff has suffered loss for 64 days during which period the vessel was detaining at Bombay Port; that the vessel would have earned Rs.35000 /- per day if it is let on charter by the plaintiff, and hence, computing the detention at the said rate, the defendant was liable to pay a sum of Rs.22,40,000/-; that in order to prove the quantum of its claim, the plaintiff has more relied on Ex.P.17 and Ex.P.18; that Ex.P.17 is a letter dated 21.1.1987 sent by the Hind Shipping Agencies, Bombay for taking the vessel on hire. According to P.W.1, the charter hire offered by the said Hind Shipping Agencies was Rs.35000/- under Ex.P.17 and the xerox copy of the agreement, dated 30.10.1987 entered into between the plaintiff and the Carborundam Universal Ltd. is Ex.P.18. Relying on these documents the learned counsel would submit that the loss of income should be calculated at Rs.35000/- per day for the said 64 days for the detention of the ship. The court is of the view that this document viewed from the oral evidence adduced by P.W.1 would be of no help to the plaintiff to claim damages at the rate of Rs.35000/- or to quantify the damages. P.W.1 has stated that he was of the view that the Hind Shipping Agencies r eferred to in Ex.p.17 was a partnership firm; that there was no indication that it was signed by a partner of a firm; that he would believe that it is the signature of Vinubai, who was the partner of the Hind Shipping Agencies and that it was true that there was nothing to show that Ex.P.17 was signed by the partner of the firm excepting that of oral testimony; that Ex.P.17 was only a letter of offer; that the offer made in Ex.P.17 was not acceptable. The witness further added that he did not know who had signed on behalf of Carborandum Universal Limited in Ex.P.18. The

author of the said document has not been examined. Under such circumstances, no reliance can be placed on the documents Ex.P.17 and Ex.P.18. Hence, the contention of the plaintiff's side that the vessel m. v.NITYA ARJUN would have earned Rs.35000/- per day if let on charter by the plaintiff cannot be countenanced. An order of the interim injunction was obtained by the defendant on 3.12.1987. It is an admitted position that the said order was communicated and reached the plaintiff on the very day, but has moved this court for vacating the said order only on 12.1.1988. Thus, there was a delay for vacating the interim injunction order. Had it been true that the vessel was seaworthy and was earning on employment, no doubt, the plaintiff should have moved the court immediately. P.W.1 has deposed that the delay was caused due to illness; that he was suffering from Typhoid and that he was the only person in-charge of the affairs of the plaintiff, who could handle such an important matters in a fair manner, cannot be accepted as true. It is also admitted by the witness that there was another Director in the Company. Needless to say that the plaintiff Company should have the managerial staff. This court, as stated supra, has passed an order on 21.1.1988. But the vessel was released only on 5.2.19 88. The contention of the plaintiff's side that the delay was caused in issuing the certified copy of the order is not acceptable, since even as per the averment in the plaint, the copy of order was obtained on 28.1.1988 itself. Significant it is to note that the plaintiff has sought permission for scraping on 8.4.1988. The plaintiff has placed documents as to the ownership and the order of this court before the Port Authorities of Bombay only on 5.2.1988 and got permission of the Port Authorities to release the ship. It has to necessarily state that the delay so caused remains unexplained. P.W.1 has categorically admitted that the cargos were not loaded in the vessel in question for a period of one week prior to the interim order of interim injunction asked on 3.12.1987. No material is placed before this court that the ship was employed or was earning anything from 5.2.1988 when the Port Authorities permitted the release of the vessel till 18.4.198 8, the date of permission granted for scraping of the vessel. It remains to be stated that the plaintiff has not filed any statement of income for atleast a few months prior to the date of the order. Under the stated circumstances, the court is able to see some force in the contention put forth by the defendant's side that the vessel was thoroughly unseaworthy and the delay in taking steps to vacate the order was purposefully and wantonly done by the plaintiff in order to enhance the claim of damages. All the above would naturally cast a doubt whether the vessel was really in a seaworthy condition during the relevant period. However, it cannot be disputed that the defendant was responsible for keeping the said vessel idle, and hence, the defendant should be directed to pay damages for the same. Taking into consideration the cumulative facts and circumstances, the court is of the view that interest of justice would be met by fixing a consolidated payment of Rs.2,50,000/- towards the plaintiff's claim with subsequent interest at the rate of 18% per annum from the date of the plaint till the date of realisation and with proportionate costs.

17. In the result, the plaintiff is given a decree for a sum of Rs.2 ,50,000/- together with subsequent interest at the rate of 18% per annum from the date of the plaint till the date of realisation and with proportionate costs. In other respects the suit is dismissed.

15-07-2002
Index : Yes.
Internet : Yes.
vvk

List of Witnesses:
1. P.W.1 - H.S.Maini
2. D.W.1 - Ramanathan

List of Exhibits:
1. Ex.P.1 - Certificate of of Incorporation of the plaintiff Company

2. Ex.P.2 - Letter

3. Ex.P.3 - Original certificate issued by Bombay Sheriff

4. Ex.P.4 - Certificate (xerox copy) issued by Republic of Panama

5. Ex.P.5 - Survey Report issued by the Surveyor Bombay

6. Ex.P.6 - Xerox copy of the Instrument of sale

7. Ex.P.7 - Xerox copy of certificate of Indian Registry

8. Ex.P.8 - Survey Report issued by the Surveyor

9. Ex.P.9 - Certificate issued by Principal Officer Mercantile Marine Department

10.Ex.P.10 - Sanction letter from the Govt. of India

11.Ex.P.11 - Certificate of the Nautical Adviser to the Govt.

12.Ex.P.12 - Copy of the plaint filed by the defendant in C.S.944 of 1987

13.Ex.P.13 - Copy of affidavit filed in A.No.5982 of 1987

14.Ex.P.14 - Copy of the affidavit and judges summons filed by the plaintiff in A.132 of 1988

15. Ex.P.15 - Copy of order dated 21.1.1988

16. Ex.P.16 - Letter dated 14.10.1985

17. Ex.P.17 - Letter dated 21.11.1987

18. Ex.P.18 - Copy of agreement dated 13.10.1987

19. Ex.P.19 - Notice dated 24.1.1991

20. Ex.P.20 - Notarized certificate of Indian Registry

1. Ex.D.1 - Register of Ships published by the Govt. of India.

15-07-2002
vvk

M. CHOCKALINGAM, J

JUDGMENT
in C.S.NO.141 OF 1991